FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/LSC/2020/0325**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**187 & 187a Dudden Hill Lane, London NW10 1AR**
Applicants	**:**	**Sunil Bhundia (1)** **Harish Bhundia (2)**
Representative	**:**	**Faisel Sadiq, Counsel**
Respondent	**:**	**Philomena Louisa Reynard Tann (1)** **Rohana W Witjetunge (2)**
Representative	**:**	**-**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge D Brandler** **J Mann MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**19th July 2021**
Date of decision	**:**	**20th August 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 485 pages, the contents of which we have noted. The order made is described at the end of these reasons.

No documents that were forwarded to the Tribunal after the conclusion of the hearing were considered.

Decisions of the tribunal

(a) The Applicants' repairing obligation is limited to those aspects of the property which are used or capable of being used by, *inter alia*, the lessor and the lessee (Clauses 3(2) in respect 187 and clause 3(iv) in respect of 187A)

(b) The Lessees, R1 and R2, are liable to pay service charges in respect of expenses falling into clause 3(2) in respect 187 and clause 3(iv) in respect of 187A

(c) While the obligation includes party walls and party structures the Applicants neither use nor are capable of using the concrete slab between 187 and 187A and are not liable for its repair under either of the leases.

(d) Clause 1 of each lease effectively demises the concrete slab to both 187 and 187A because:

(1) R1, The lessee of 187 is liable to repair the foundations of the demised premises and party structures (Clause 2(8))

(2) R2, The lessee of 187A is liable to repair the roof of the demised premises and party structures (Clause 2(8))

(3) The leases do not reserve any part of 187 or 187A to the Applicant

(e) The lease is silent on the respective contributions of the lessees to repairs to party structures though in relation to their liability to pay service charges both leases contain a requirement to pay a rateable or due proportion. The fair apportionment of the liability to pay for party structures would be 50% each.

(f) Under Clauses 2(11) and 2(12) of both leases the Applicants have a right of entry. Clause 2(12) of the leases permits the Applicants to enter and repair at the expense of the lessees. Such a charge would not be a service charge for the purposes of s.27A Landlord and Tenant Act 1985

(g) R1's cross application in relation to S.20C and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("CLARA") is dismissed. There are no service charges, or administration charges to assess. Further, for the avoidance of doubt, the Applicants cannot be criticised, bearing in mind the previous attempts to resolve matters, for having brought this application.

(h) R1's application to set off her expenses against any liability she has is dismissed. This is a matter for her to argue at any subsequent hearing and is beyond the scope of the Tribunal in this application, there being no service charges to asses.

The Applications

The Applicants' application

2. The Applicants are the freeholder owners of the building known as 187 Dudden Hill Lane, London NW10 1AR ("the building"), which is comprised of two maisonettes. Mrs Philomena Louisa Reynard Tann ("R1") holds the long leasehold interest of the ground-floor maisonette ("187"). Mr Rohana W Witjetunge ("R2") holds the long leasehold interest of the first-floor maisonette ("187A").

3. There is a single storey extension to the rear of 187. The extension provides 187 with an additional room beyond the kitchen, and provides 187A with a room sized balcony area. There is a concrete slab that forms the roof to the rear extension. This slab also forms the floor of the balcony. The concrete slab was at all material times covered by several layers of asphalt. There was formerly a metal staircase leading from the balcony to the garden at ground level.

4. In 2018 R1 approached R2 and asked him to remove the metal staircase. R2 states that no permission was sought from the Applicants in this regard. The works were badly done by R2's contractors and it left damage such that water could penetrate from the roof of the extension into the ground floor extension.

5. In 2020 the Applicants investigated the damage to the rear extension caused by the removal of the metal staircase as part of an investigation further to R1's claims that the building was suffering from subsidence.

6. The concrete slab that forms an integral part of the roof/floor is severely cracked, has become unsafe and must be replaced.

7. The purpose of the application is to determine

(i) Whether the concrete slab is demised to R1 and/or R2 or whether it remains owned by the Applicants
(ii) If demised to the Rs, is it demised to R1 or R2 or both
(iii) Whether the Applicants arethe liable to repair the concrete slab and recharge the cost of the repairs by way of service charge to R1 and/or R2 pursuant to the leases for 187 and 187A
(iv) If the Applicants are liable to repair and recharge, in what proportion should R1 and R2 be liable to pay for the repairs

8. The Applicants' position is that their only obligation under the terms of the lease is to repair/contribute towards the costs of repairing those parts of the building that are either not demised to the Rs or that are used or capable of being used by the Applicants in common with R1 and R2. Accordingly, the Applicants have looked to Rs to repair the concrete slab.

9. The Application has been brought because R1 has refused to carry out the repairs with R2. R1 contends that it is the Applicants' responsibility under the terms of her lease for 187.

10. R2 does not oppose this application.

11. R1 opposes the application and asks the Tribunal to determine what caused the cracking and damage to the concrete slab and to determine the consequential damage to the ceiling of 187. She also asks for a determination as to who is responsible for the damage and who is liable to repair. She further asks the Tribunal to determine whether maintenance, early inspection, detection and timely repairs would have reduced the extent of the consequential damage to 187 and the repair costs.

12. R1 also asks what is the extent of the repairing obligations of R1, R2, and the Applicants for the damage which she says was caused by R2 and the Applicants.

13. R1 seeks a set off of the ongoing repair costs for the structural cracks, damp treatments and frequent decoration of 187, financial losses including loss of rental income, inconvenience, nuisance and loss of amenity.

14. R1 seeks clarification as to whether the new replacement concrete slab should be on a true like for like basis in relation to materials and structure.

<u>R1's Application</u>

15. On 27/01/2021 R1 submitted a cross application under paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("CLARA"). The grounds of her application are in essence as follows:-

(1) The Freeholders (Applicants) are not permitted under the terms of the lease to charge legal costs by way of an administration charge
(2) The Freeholder (Applicants) and R2 were notified over a long period of time of the damage caused to 187 rear extension by their defective broken external metal staircase
(3) She paid insurance and administration charges to the Freeholders who failed to report the damage to 187 to their insurers AXA. AXA then denied liability in their report of March 2020 as the damage predates the policy. Because the Freeholders failed to claim in time the opportunity has been lost
(4) She was not the insured at that time, and could not enforce.
(5) In 2018, the Freeholders consented and provided a Licence to R2 for the removal of the staircase. The removal caused further extensive damage to 187.
(6) The Applicants obtained two reports confirming damage was caused by the removal of the metal staircase. Notwithstanding that fact, the Applicants allege the repair is covered under the lease of 187 repairing covenant and are demanding that she carry out the repair. Additionally conditions and requirements are imposed on her as to how the repair is to be carried out.
(7) The application is necessary to provide rulings upon who caused the damage, who is liable and the correct interpretation of the Lease for the benefit of all parties. Therefore she should not be charged the Landlord's legal costs in connection with this.
(8) The rear extension of 187 has been left structurally unsafe, in disrepair and uninhabitable
(9) The occupiers of 187 continue to suffer loss of amenity, inconvenience, nuisance and loss of peaceful enjoyment. She incurs frequent costs of damp treatment/works, repairs, decoration costs, escalating disrepair, financial losses and loss of rent
(10) This is her only retirement investment. Her retirement is on hold as the Property is unsellable and unmortgageable. The Freeholders are big landlords. They own a vast portfolio of properties with a team of insurance brokers, managing agents,

surveyors, city lawyers and other service providers to assist them.

(11) She is a solicitor but does not practice landlord and tenant law, property disputes or civil litigation.

16. Paragraph 5A to Schedule 11 of CLARA is concerned with liability to pay administration charges in respect of litigation costs.

The hearing

17. The Applicants were represented by Faisel Sadiq of Counsel. Mr Sunil Bhundia ("A1") joined by video accompanied by his nephew Fabien Bhundia. Also joining by video were the Applicants' solicitors, Leon Goldstein and James Hibbert both from Seddons Law LLP.

18. For the Respondents, R1 appeared in person accompanied by her husband by video connection. R2 also joined by video connection. R2 appeared in person. He does not oppose the application. He provided a written statement and gave evidence during the course of the hearing.

19. Immediately prior to the hearing the Tribunal were provided with a skeleton argument from Counsel for the Applicants

Preliminary issues

20. R1 objected to the Applicants failure to comply with Directions despite having instructed a city firm of solicitors as well as counsel. She also asserts that the Applicants own "vast" amounts of property and have been in the property business for a very long time. In particular she says they provided documents piece meal and late. R1 states that even though she suffered a bereavement, she managed to comply with Directions but that the failure by the Applicants made things difficult for her.

21. R1 wanted part of the Applicants' case struck out or at least the unsigned witness statement from Leon Goldstein which she objects to.

22. Mr Sadiq on behalf of the Applicants says that Mr Goldstein's statement is part of the bundle but it is an exhibit [97], and although he understands why R1 may want this statement excluded, he says there are exhibits to his statement that provide some important background.

23. In terms of prejudice, the Applicants accept that they complied with service late, on 12 April 2021 for which they apologise. The delay is explained because R1 has attempted to expand the scope of her application which required further time. They say there was no prejudice to R1 as she has not identified what she would have done differently, and that it would be disproportionate to strike out the

Applicants evidence for being 11 days late, some 3 months prior to the hearing.

24. No application was made by the Applicants to extend time.

25. The Tribunal considered everything that had been said and found that neither party had applied to extend time, that there had not been any prejudice to R1 even if there had been late service. She had sufficient time to respond having received the Applicants' documents on 12 April 2021, over three months prior to this hearing.

26. In relation to the unsigned witness statement from Mr Goldstein dated 20/08/2020, the Tribunal found that it was important to permit this document to remain in evidence because of the background information contained therein, and accepted that a signed copy had been provided to R1 in any event.

27. R1's oral application is refused. The Applicants' evidence is admissible.

The background

28. The Tribunal had the benefit of various reports detailing problems with the extension to the rear of the property. In particular

    (1) QuestGates Surveying Services report dated 30 March 2020 [165],
    (2) Tecon Ltd report from HM Dodia dated 18/05/2020 [168]
    (3) Report by MS Crilly, Expert Geotechnical engineer, December 2017 [383],

29. The Applicants say that the damage to the concrete slab between the ground and first floor flats first came to light in February 2020 [A1 w/s para 3 p.97]., although there was already at that stage a history of litigation after R1 issued proceedings against AXA to which the Applicants were joined as respondents

30. Paragraph 8 of A1's w/s of 08/04/2021 is quoted below in full as it sets out the detail of the history and is useful to provide an understanding

> " The relationship between the Applicant and Mrs Tann has been confrontational and
> acrimonious for some years and to save duplication, I attach a witness statement previously lodged in Court proceedings by my solicitor in which he explains at length, the extensive history of the dispute between us. The roof slab replacement issue is the latest issue. In summary, Mrs Tann made an unsuccessful insurance claim in 2011
> seeking redecoration of her flat and lost rental income based on her belief of

subsidence at the property. No subsidence was found (then or previously) and her claim was rejected. Mrs Tann made the same claim in 2016 against new insurers and they too refused the claim on the basis that there was no subsidence, but if there was, it should be referred back to the previous insurers. Mrs Tann sued the insurers for breach of contract but abandoned the claim and paid their costs. Mrs Tann sued us instead for the same relief, contending (quite wrongly) that there was ongoing subsidence. After taking expert and legal advice on her claim, Mrs Tann mediated and settled on the term of an agreement drafted by three chartered building surveyors and her counsel. This was sealed by the Court with her consent in December 2019. Ms Tann then tried to have that mediation set aside but failed with penalty costs awarded against her. She also (in parallel), made application to this Tribunal in 2018 (LON/00AE/LSC/2018/0316) to seek a ruling that she was not liable to pay towards the landlord's insurance premiums or related charges on the ground that her lease entitled her to self-insure. The Tribunal agreed and we accepted the ruling. Mrs Tann now self-insures her half of the building but has declined to say if she has claimed against her own policy for the roof slab in issue. Mrs Tann continues to repeat and recycle complaints she has previously settled, but as they are not relevant to the matters before this Tribunal, I am not addressing them here."

31. Although R1 was successful in her previous claim to the Tribunal who determined that the terms of the lease do not permit the Applicants to charge her insurance premiums or administration charges, some service charge demands have been issued to R1 which refer to insurance premiums, administration charges, and management fees. In oral evidence A1 confirmed that these were sent to her in error and are withdrawn.

32. As can be seen from R1's cross application claiming to be under the provisions of CLARA, her position is that the Applicants have not maintained the building, that they have not made a claim for the alleged subsidence, and that she has been left with losses from the works carried out by her in 187 and her loss of rental income. Much of her application under the provisions of CLARA are in fact nothing to do with CLARA, and are rather an attempt for off-set against any liability that the Tribunal may find against her in relation to the cost the remedial works required.

33. On 26/11/2019 a mediation agreement was signed by the Applicants and R1 and R2 in relation to works that were required at that time. R1 seems to want the Tribunal to go behind that agreement.

The leases

34. The relevant terms of the leases of 187 and 187A contain the following provisions:

The Demise	

LEASE OF 187	Lease of 187A
Clause 1 [68]: *"…the Lessor HEREBY DEMISES unto the lessees ALL THOSE pieces of land situated and being on the northern side of the road known as Dudden Hill Lane, Willesden in the London Borough of Brent and which as to its position and boundaries are particularly shown on the plan annexed hereto and thereon coloured green and red TOGETHER with the lower maisonette erected thereon and known as 187, Dudden Hill Lane, Willesden in the London Borough of Brent…"*	Clause 1 [77]: *"…the Lessor HEREBY DEMISES unto the Lessee ALL THOSE PIECES of land situate and being on the northern side of the road known as Dudden Hill Lane Willesden in the London Borough of Brent and which as to its position and boundaries are particularly shown on the plan annexed to the Underlease and thereon coloured green and mauve hatched red together with the maisonette known as 187a Dudden Hill Lane Willesden aforesaid being the entrance hall on the ground floor and the first floor and the staircase as leading thereto of the building now standing upon the pieces of land coloured red and hatched red respectively…"*
Lessees' Repairing Covenants	
Clause 2(8) [70]: "*From time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain drain amend and where necessary rebuild the demised premises and in particular the foundations of the demised premises and all new buildings which may at any time during the said term be erected thereon by the Lessees and all additions made to the demised premises and the fixtures therein and all party and other walls and fences sewers drains pathways passageways easements and appurtenances thereof with all necessary reparation cleansing and amendments whatsoever"*	Clause 2(8) [79]: "*From time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain drain amend and where necessary rebuild and keep the Demised Premises and in particular the roof of the Maisonette and all new buildings which may at any time during the said term be erected on and all additions made to the Demised Premises and the fixtures therein and all party and other walls and fences sewers drains pathways passages easements and appurtenances thereof with all necessary reparation cleansings and amendments whatsoever"*

Lessees' obligations to pay service charges	
Clause 2(9) at [HB/P70]: *"At all times during the said term to pay and contribute a rateable or due proportion of the expenses of making repairing maintaining supporting rebuilding and cleansing all ways passage ways pathways sewers drains pipes watercourses water pipes cisterns gutters foundations party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Lessees in common with the Lessor and lessee of the upper maisonette or the tenants or occupiers of the premises near to or adjoining the demised premises or of which the demised premises form part such proportion in the case of difference to be settled by the Surveyor for the time being of the Lessor whose decision shall be binding…"*	Clause 2(9) at [HB/P80]: *"At all times during the said term to pay and contribute a rateable or due proportion of the expense of making repairing maintaining supporting or rebuilding and cleansing all ways passage ways pathways sewers drains pipes watercourses water pipes cisterns gutters party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the Lessor or the tenants of occupiers of the premises near to or adjoining the Demised Premises or of which the Demised Premises form part such proportion in the case of difference to be settled by the Surveyor for the time being of the Lessor whose decision shall be binding…"*
Right of entry	
Clause 2(11) at [71]: *"To permit the lessor and his agents at all reasonable times during the said term with or without workmen or others to enter the demised premises and examine the state of repair and condition thereof ….And also to repair and make good all defects and wants of reparation which shall be discovered on any such examination and of which notice in writing shall be given by the Lessor to the Lessees within three calendar months after the giving of such notice"*	Clause 2(11) at [80] *"To permit the Lessor and his agents at all reasonable times during the said term with or without workmen or others to enter the Demised Premises and examine the state of repair and condition thereon ….And also to repair and make good all defects and wants of reparation which shall be discovered on any such examination and of which notice in writing shall be given by the Lessor to the Lessee within three calendar months after the giving of such notice"*

Clause 2(12) *"If the Lessees shall make default in any of the covenants hereinbefore contained for or relating to the repair of the demised premises it shall be lawful for the Lessor (but without prejudice to the right of re-entry under the clause hereinafter contained) to enter upon the demised premises and repair the same at the expense of the lessees in accordance with the covenants and provisions of these presents and the expenses of such repairs shall be prepaid by the Lessees to the Lessor on demand"*	Clause 2(12) *"If the Lessee shall make default in any of the covenants hereinbefore contained for or relating to the repair of the Demised Premises it shall be lawful for the Lessor (but without prejudice to the right of re-entry under the clause hereinafter contained) to enter upon the Demised Premises and repair the same at the expense of the Lessee in accordance with the covenants and provisions of these presents and the expenses of such repairs shall be prepaid by the Lessee to the Lessor on demand"*
Landlord's repairing covenant	
Clause 3(2) at [73]: *"The Lessor HEREBY COVENANTS with the Lessees as follows:* *At all times during the said term to repair maintain support rebuild and cleanse and to pay and contribute a rateable proportion of the expense of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains watercourses water pipes cisterns gutters roofs party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Lessor with the Lessees and the tenants or occupiers of the premises near to the demised premises or of which the demised premises form part such proportion in the case of difference to be settled by the Surveyor for the time being of the Lessor whose decision shall be binding."*	Clause 3(iv) at [83]: *"THE Lessor HEREBY covenants with the Lessee as follows:* *At all times during the said term to pay and contribute a rateable or due proportion of the expense of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes watercourses water pipes cisterns gutters roofs party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Lessor in common with the Lessee and the tenants or occupiers of the premises near to or adjoining the Demised Premises or of which the Demised Premises form part such proportion in the case of difference to be settled by the Surveyor for the time being of the Lessor whose decision shall be binding."*

Oral evidence

35. The Tribunal noted that much of the oral evidence was not related to the Applicants' application but instead related to R1's application. The issues canvassed in evidence and cross examination included:

    (i) Whether or not the Applicants consented to the removal of the metal stairs

    (ii) What the cause of the cracking in the concrete slab was

    (iii) Issues around Japanese Knotweed

    (iv) Issues around insurance

36. Without wishing any disrespect to the parties, the Tribunal does not need and it is doubtful it has the jurisdiction to determine issues around quantum or fault especially as there is no claim for service charges before the Tribunal.

37. The pertinent issue is therefore a determination of what the respective leases say about the parties' repairing obligations and whether or not service charges would be payable by R1 and R2.

The tribunal's decision and reasons

38. This is an application brought under s.27A Landlord & Tenant Act 1985 to determine whether service charges are reasonable and payable. In fact, the Tribunal is not being asked to determine that at all in this application. All the parties seek clarification as to the liability of each party under the terms of the lease.

39. The history of the case is complicated and whilst attempts have been made to resolve the issues of repair at previous county court proceedings and subsequent mediation, the matter is still not resolved, and R1 still denies liability to contribute under the terms of the lease.

40. Although some service charge demands have been included in the bundle by R1, dated 08/04/2021, which include a demand for a management fee, insurance premium and an administration charge, the Applicants confirm that these demands were sent to R1 in error and are not demanded at all. For the avoidance of doubt, the Applicants are not permitted under the terms of the lease for 187 to demand building insurance premiums. Nor are they permitted to demand administration charges. This issue was the subject of a previous Tribunal

determination (*LON/00AE/LSC/2018/0306* at a hearing on 14/11/2018)

41. There are no other issues of service charges demanded in this application, a determination is sought in relation to the liability of each party under the terms of the lease.

42. Whilst the Tribunal noted all of evidence provided, including the reports providing the opinions of the repairs required in the property, and the possible causes, none of that is material to what the Tribunal has to determine.

43. The Tribunal has to determine the liability under the terms of the lease which is at issue between the Applicants and R1. R2 does not disagree with the Applicants.

44. The Tribunal found no difficulties interpreting the terms of the leases.

45. The Tribunal makes the following determinations

(a) The Applicants' repairing obligation is limited to those aspects of the property which are used or capable of being used by, *inter alia*, the lessor and the lessee (Clauses 3(2) in respect 187 and clause 3(iv) in respect of 187A)

(b) The Lessees, R1 and R2, are liable to pay service charges in respect of expenses falling into clause 3(2) in respect 187 and clause 3(iv) in respect of 187A

(c) While the obligation includes party walls and party structures the Applicants neither use nor are capable of using the concrete slab between 187 and 187A and are not liable for its repair under either of the leases.

(d) Clause 1 of each lease effectively demises the concrete slab to both 187 and 187A because:

(1) R1, The lessee of 187 is liable to repair the foundations of the demised premises and party structures (Clause 2(8))

(2) R2, The lessee of 187A is liable to repair the roof of the demised premises and party structures (Clause 2(8))

(3) The leases do not reserve any part of 187 or 187A to the Applicant

(e) The lease is silent on the respective contributions of the lessees to repairs to party structures though in relation to their liability to pay service charges both leases contain a requirement to pay a rateable or due proportion. The fair apportionment of the liability to pay for party structures would be 50% each.

(f) Under Clauses 2(11) and 2(12) of both leases the Applicants have a right of entry. Clause 2(12) of the leases permits the Applicants to enter and repair at the expense of the lessees. Such a charge would not be a service charge for the purposes of s.27A Landlord and Tenant Act 1985

(g) R1's cross application in relation to S.20C and paragraph 5A of Schedule 11 of CLARA is dismissed. There are no service charges, or administration charges to assess. Further, for the avoidance of doubt, the Applicants cannot be criticised, bearing in mind the previous attempts to resolve matters, for having brought this application.

(h) R1's application to set off her expenses against any liability she has is dismissed. This is a matter for her to argue at any subsequent hearing and is beyond the scope of the Tribunal in this application, there being no service charges to asses. .

Name: Judge D Brandler **Date:** 20th August 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
   (a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Landlord and Tenant Act 1987

Section 47

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
(a) the name and address of the landlord, and
(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—
(a) a tenant of any such premises is given such a demand, but
(b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal], there is in force an appointment of a receiver or manager whose functions

include the receiving of service charges [or (as the case may be) administration charges] from the tenant.

(4) In this section *"demand"* means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Section 48

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent [, service charge or administration charge] otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent [, service charge or administration charge]1 shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal] , there is in force an appointment of a receiver or manager whose functions include the receiving of rent [, service charges or (as the case may be) administration charges] from the tenant.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
   (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
   (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
   (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
   (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).